

Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROSEMARY SAFFIOTI, individually and as
Personal Representative of the ESTATE OF
MICHAEL SAFFIOTI, deceased, and
GIOVANNI SAFFIOTI, individually,

Plaintiffs,

v.

SNOHOMISH COUNTY, a municipal
corporation, LENNON DEL ROSARIO, BRIAN
QUINN, JEFFREY LANGSAM, LAUREN
KOOIMAN, LYNDIA SIMON, BETTY
MARLIN, BETTY LUSK, and ARAMARK
CORRECTIONAL SERVICES, LLC, a limited
liability company organized under the State of
Delaware,

Defendants.

No. 2:14-cv-00361-TSZ

SNOHOMISH COUNTY'S MOTION
TO SEAL CERTAIN EVIDENCE
SUBMITTED WITH THE
SNOHOMISH COUNTY
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

NOTED ON MOTION CALENDAR:
May 22, 2015

Without Oral Argument

I. RELIEF REQUESTED

The Snohomish County Defendants intend to file a summary judgment motion on May 13, 2015, which will contain an exhibit subject to the "Confidentiality" provisions of the parties' Stipulated Protective Order, Dkt. 78. The subject exhibit is a two-part surveillance

SNOHOMISH COUNTY'S MOTION TO SEAL CERTAIN
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(No. 2:14-cv-00361-TSZ) - 1

LAW OFFICES OF
MILLS MEYERS SWARTLING P.S.
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

1 video of the Snohomish County Jail, Module E-4, from the morning of July 3, 2012. The
 2 Snohomish County Defendants respectfully request that the Court seal this exhibit or enter
 3 other appropriate orders.¹

4 II. BACKGROUND

5 A. Plaintiffs' Claims and Allegations

6 On July 3, 2012, Michael Saffioti died while incarcerated at the Snohomish County
 7 Jail. Dkt. # 106 (3d Am. Compl.), at 2–3; 14–16. Plaintiffs allege that Mr. Saffioti died of
 8 anaphylactic shock due to the presence of dairy in oatmeal that he ate in the Jail. *Id.*
 9 Plaintiffs allege that the Snohomish County Defendants (1) were deliberately indifferent to
 10 Mr. Saffioti's need for medical attention, (2) violated Plaintiffs' individual Fourteenth
 11 Amendment rights due to the loss of their son, (3) committed the tort of outrage, and (4) were
 12 negligent. *Id.* at 4–10; 14–16. Plaintiffs have asserted negligence claims against Aramark.
 13 *Id.* at 16.

14 B. Evidence Subject to Motion to Seal

15 The exhibit subject to this Motion to Seal is comprised of two surveillance videos.
 16 Fetters Decl. Ex. A (Module Video, Filed Under Seal). Both videos are of the Snohomish
 17 County Jail, Module E-4, from the morning of July 3, 2012. *Id.* The first video shows
 18 Module E-4 between 5:30 and 6:30 a.m. *Id.* The second video shows Module E-4 between
 19 6:30 and 7:11 a.m. *Id.*

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 24 ¹ Local Civil Rule 5(g) permits a party to file documents under seal without prior Court approval pending the
 25 Court's ruling on the motion to seal. LCR 5(g)(2)(B). Under this process, the documents are kept under seal
 26 until the Court determines whether they should remain sealed. *Id.*

1 **C. Meet and Confer Certification**

2 The meet and confer requirements of the Parties' Stipulated Protective Order and
3 Local Rule 5(g) do not apply with respect to the surveillance videos because Snohomish
4 County is the "designating party" under those provisions. *See* Dkt. 78 at 5; LCR 5(g)(1)(A).

5 **III. AUTHORITY AND ARGUMENT**

6 **A. The Surveillance Video Falls Within the Definition of "Confidential" Materials,**
7 **as Defined by the Stipulated Protective Order.**

8 The parties' Stipulated Protective Order states that the following documents, among
9 others, may be designated as "Confidential" material:

10 b. Snohomish County Jail inmate records; records of this nature may
11 contain medical and/or psychological records, social security
12 information, date of birth, photographs, or any other private or
13 confidential information. This includes, but is not limited to, healthcare
14 records and Protected Health Information ("PHI") related to inmates
incarcerated in the Snohomish County Jail is protected from disclosure
pursuant to 45 CFR § 164.512(e), RCW 70.02.060 and RCW
70.48.100.

15 c. The parties intend for this Order to comply with the requirements of
16 RCW 70.48.100(c) that allows confidential inmate records to be made
17 available "for use in court proceedings upon the written order of the
court in which the proceedings are conducted."

* * *

18 j. Any other information to be requested in discovery that has an
19 equivalent need for protection from disclosure as those items identified
in subparagraphs 1(a) through (i).

20 Dkt. 78 at 2–3.

21 The surveillance video qualifies as "confidential" under provisions (b) and (c) of the
22 Protective Order because the video is an "inmate record" pursuant to RCW 70.48.100 and/or
23 because the video requires an equivalent need for protection from disclosure as those items
24 identified in subparagraphs 1(a) through (i) of the Stipulated Protective Order. Washington's

jail records statute provides that “records of a person confined in jail shall be held in confidence” and are only made available for use in court proceedings upon the written order of the court or upon the written permission of the person. Wash. Rev. Code § 70.48.100(2); *Sotin v. Snider*, No. CV-07-325-RHW, 2008 U.S. Dist. LEXIS 120549, *2–3, 2008 WL 2074033 (E.D. Wash. May 14, 2008). Snohomish County Code § 5.04.060 incorporates the privacy requirements of Wash. Rev. Code § 70.48.100. Although Wash. Rev. Code § 70.48.100(2) does not expressly state that a video recording of an inmate is a “record of a person confined in jail,” this is fairly inferred by virtue of Wash. Rev. Code § 7.48.100(3), which provides privacy protections to booking photos of inmates. *Cf. Cowles Publ'g Co. v. Spokane Police Dep't*, 139 Wn.2d 472, 481, 987 P.2d 620 (1999) (“We conclude the specific language of RCW 70.48.100(2) limits the use of booking photos to legitimate law enforcement purposes only.”). Similarly, Wash. Rev. Code § 42.56.250(8) prohibits the release of photos of corrections deputies.

B. Washington Law Requires a Court Order Prior to Public Release the Surveillance Video.

Local Civil Rule 5(g) states, “[t]here is a strong presumption of public access to the court’s files.” *Id.* The rule further provides that evidence will not be sealed unless authorized by a statute, rule, or prior court order, and that the motion to seal must be supported by “a specific statement of the applicable legal standard and the reasons for keeping a document under seal, with evidentiary support from declarations where necessary.” LCR 5(g)(2), (3).

Historically, courts have recognized a “general right to inspect and copy public records and documents, including judicial records and documents.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978). “Unless a particular court record is one ‘traditionally kept secret,’ a ‘strong presumption in favor of access’ is the starting point.

1 *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Foltz*
 2 *v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). In order to
 3 overcome this strong presumption, a party seeking to seal a judicial record must articulate
 4 compelling reasons for sealing that outweigh the public policies favoring disclosure.
 5 *Kamakana*, 447 F.3d at 1178-79.

6 Under the “compelling reasons” standard, the party seeking to seal judicial records
 7 bears the burden of “articulat[ing] compelling reasons supported by specific factual findings .
 8 . . . that outweigh the general history of access and the public policies favoring disclosure, such
 9 as the public interest in understanding the judicial process.” *Id.* (internal citations and
 10 quotation marks omitted). “In turn, the court must conscientiously balance the competing
 11 interests of the public and the party who seeks to keep certain judicial records secret.” *Id.* at
 12 1179 (internal alterations, quotation marks, and citations omitted). Then, “if the court decides
 13 to seal certain judicial records, it must base its decision on a compelling reason and articulate
 14 the factual basis for its ruling, without relying on hypothesis or conjecture.” *Id.*

15 The Court previously found that there was good cause to limit public access to images
 16 of the Jail in relation to Plaintiffs’ request to videotape a tour of the Jail. *See* Dkts. 52–54;
 17 61–63; 69. In Snohomish County’s prior briefing on this issue, the Declaration of Lyndsey
 18 M. Downs explained that the County previously provided the surveillance video to Plaintiffs
 19 pursuant to a Public Records Act Request. Dkt. 63 at 1–2. Thereafter, the County received
 20 requests from certain media outlets to obtain the video. *Id.* at 2. Because the video is a “jail
 21 record” pursuant to Wash. Rev. Code § 70.48.100(2), the County deemed the video
 22 confidential, meaning that it could be released only to certain persons as set forth by statute.
 23 *Id.* Accordingly, the County advised Plaintiffs of any request by the media outlets, and
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 25

1 Plaintiff provided written consent authorizing release of the video to the requesting media
2 outlets, all as authorized and required under Washington law. *Id.* at Dkt. 63 at 2–4.

3 In this case, Snohomish County acknowledges that motions to seal are disfavored and
4 require “compelling reasons” to justify sealing evidence used to support a dispositive motion.
5 Nevertheless, under the present circumstances, Wash. Rev. Code § 70.48.100(2)(c) requires a
6 court order before the County can “release” the subject video to the general public by virtue
7 of its summary judgment motion. Thus, Snohomish County respectfully requests that the
8 Court either (1) maintain the surveillance video under seal; or (2) issue an Order pursuant to
9 Wash. Rev. Code § 70.48.100(2)(c).

10 IV. CONCLUSION

11 A proposed order is submitted with this motion.

12 DATED: May 13, 2015.

13 MILLS MEYERS SWARTLING P.S.
14 Attorneys for Snohomish County

15 By: /s/John Fetters
16 Caryn Geraghty Jorgensen
17 WSBA No. 27514
18 John Fetters
19 WSBA No. 40800
20 Mills Meyers Swartling P.S.
21 1000 Second Avenue, 30th Floor
22 Seattle, WA 98104
23 Telephone: 206-382-1000
24 Fax: 206-386-7343
25 cjorgensen@millsmeyers.com
26 jfeters@millsmeyers.com

MARK K. ROE
Snohomish County Prosecuting Attorney

Robert Tad Seder
WSBA No. 14521
Hillary Evans Graber
WSBA No. 35784
Deputy Prosecuting Attorneys
Attorney for Snohomish County
Defendants
Snohomish County Prosecuting
Attorney – Civil Division
3000 Rockefeller Ave., M/S 504
Everett, Washington 98201
Phone: (425) 388-6330
Fax: (425) 388-6333
tseder@co.snohomish.wa.us
hillary.graber@snoco.org

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LAW OFFICES OF
MILLS MEYERS SWARTLING P.S.
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

Elizabeth J. Donaldson liz@jsrogerslaw.com

Hillary Evans Graber Hillary.Evans@co.snohomish.wa.us,
SPalmer@co.snohomish.wa.us, Steven.Beard@co.snohomish.wa.us

Mick A. Jaeger, jaeger@lbbslaw.com, lisa.blakeney@lewisbrisbois.com

Brian A. Kelly, bakelly@duanemorris.com, bmcoffey@duanemorris.com,
llrich@duanemorris.com, jcoogan@duanemorris.com

Robert D. Lee rlee@cozen.com, dfinafrock@cozen.com

Sean Bennet Malcolm, sean@kirklandtriallawyer.com

James Steven Rogers jsr@jsrogerslaw.com, anna@jsrogerslaw.com,
csnow@jsrogerslaw.com, dawn@jsrogerslaw.com, michelle@jsrogerslaw.com,
bjb@jsrogerslaw.com, katelyn@jsrogerslaw.com, liz@jsrogerslaw.com

Robert Tad Seder tseder@co.snohomish.wa.us, SPalmer@co.snohomish.wa.us,
Steven.Beard@co.snohomish.co.us, llindquist@co.snohomish.wa.us

Cheryl L. Snow csnow@jsrogerslaw.com, cherylsnow000@gmail.com

William Harrison Walsh wwalsh@cozen.com, jmyoung@cozen.com,
smacias@cozen.com, iwilliamson@cozen.com, smacias@cozen.com

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Legal Assistant